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February 16, 1995

VIA MESSENGER

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Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222, Stop Code 1170
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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Re: Ex Parte Request for Clarification Regarding
Treatment of Limited Liability Companies for
Purposes of Designated Entity Qualifications in
PP Docket No. 93-253

Dear Mr. Caton:

Under PP Docket No. 93-253, the requirements for an entity wishing to qualify as a minority- or women-owned small business ("DE") are slightly different for corporations and for partnerships. Specifically, a corporation attempting to qualify as a DE must have a minimum of 15% of its total equity, and 50.1% of the voting stock of its control group, held by individuals that are minorities and/or women. In addition to meeting the qualifications for corporations, partnerships seeking to qualify for DE status must also demonstrate that all general partnership interests are held by minorities and/or women (or minority and/or women-owned businesses) in the control group and that nonattributable investors hold limited partnership interests only and not general partnership interests. See, e.g., Erratum, PP Docket No. 93-253, ¶ 2 (rel. January 10, 1995).

Limited liability companies ("LLCs") have many of the characteristics of corporations (including limited liability of shareholder/members under state law). However, they can provide the additional tax benefits of eliminating taxation at the corporate level and also provide incentives for investors by permitting pass through of the early year capital investment expenses to members. LLCs are not specifically referred to in PP

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Docket No. 93-253.^{1/} As the Commission has recently noted in Review of the Commission's Regulations Governing Attribution of Broadcast Interests, MM Docket No. 94-150, ¶¶ 66-67 (rel. January 12, 1995), the specific attributes of LLCs may vary. Some may have centralized management structure, while others may leave significant management functions with the members or others. Your guidance is sought with respect to the application of the DE requirements of PP Docket 93-253 to the following form of LLC, which will be organized essentially like a corporation.^{2/}

The LLC would be governed by managers or directors, whose duties and responsibilities would be similar to those of a corporation's board of directors. It is contemplated that the LLC's governing document would vest day-to-day operational and management responsibility in the managing board. The managers will also appoint a CEO, a President, and other officers, whose responsibilities will be similar to those typically performed by corporate officers. The LLC agreement would reserve to the shareholder/members the right to vote for election of the managers and on a limited number of other matters designed solely to protect their investment, including, for example, mergers and consolidations, the sale of all or substantially all of the assets of the LLC, and certain fundamental amendments to the LLC agreement. Members will not be permitted to transfer their interests in the LLC without the consent of the members. None of the members will own either general or limited "partnership" interests.^{3/}

The Commission has tentatively concluded that LLCs should be treated as limited partnerships for purposes of multiple ownership attribution analysis, but it continues to seek

^{1/} A number of states also authorize the organization of limited liability partnerships. This request for clarification does not concern limited liability partnerships.

^{2/} The LLC proposed here would not be a bidder/applicant for a PCS license; it would be the subsidiary of a corporate DE holding company that would be the bidder/applicant. If the Commission permits pro forma license transfers, the holding company would transfer the license to the LLC. See my letter to William Caton re. pro forma transfers (February 10, 1995).

^{3/} In order to qualify for the foregoing tax advantages of a partnership, the LLC will lack continuity of life (i.e., it will be subject to dissolution upon the occurrence of certain events unless the members vote to continue it).

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comment on whether LLCs with "centralized management" should be differentiated. Attribution of Broadcast Interests, ¶ 75. Because the LLC described above is centrally managed, we believe that it should be treated like a corporation for purposes of the DE structural requirements in the instant docket. The control group requirements for a corporate DE can be applied without modification to this LLC. The management would be centralized in a control group that owns 25% of the LLC's equity and a majority of the voting stock, with qualifying investors in the control group holding 15% of the LLC's total equity and 50.1% of the control group's voting stock. On the other hand, it is unclear how the additional requirement for a partnership DE would apply to an LLC: "general partnership interests" could not be held by the control group because there are no partners or partnership interests in an LLC.

In accordance with the Commission's rules, two copies of this letter are enclosed for filing in the public record on this docket.

Sincerely,


Lynn Charytan

cc: Rosalind K. Allen
Kathleen Ham
Peter Tenhula